IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4732 of 2007()

CRIME NO.238/07 OF KOIPURAM POLICE STATION

PTITIONERS : ACCUSED 1 AND 2:

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1. SAM ABRAHAM, S/O.V.M.ABRAHAM,
   VALEL KIZHAKKETHIL VEEDU, KOIPURAM P.O.,
   KOZHENCHERRY TALUK, PATHANAMTHITTA DISTRICT.

2. V.M.ABRAHAM, VALEL KIZHAKKETHIL VEEDU,
   KOIPURAM P.O., KOZHENCHERRY TALUK, PATHANAMTHITTA
   DISTRICT.

BY ADV. SRI.P.HARIDAS

RESPONDENTS: STATE AND COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
   KOIPURAM, PATHANAMTHITTA DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4732 OF 2007

Dated this the 13th day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. They are son and father. The crux of the allegations is that wrongly assuming that a complaint for matrimonial cruelty was filed against the 1st petitioner by his wife, at the instance of the de facto complainant, the two accused persons attacked the de facto complainant by throwing acid on him. The acid hit the eye of the de facto complainant. He has suffered injuries on the eye as also on the other parts of the body. The victim was immediately taken to the Doctor. The First Information Statement was promptly recorded. Specific allegations are seen raised against the petitioners in the First Information Statement. Investigation is in progress. The petitioners apprehend imminent arrest for the offence punishable under Sec.326 read

with Sec.34 of the IPC.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. It is submitted that the de facto complainant has criminal antecedents and that the allegations are raised falsely against the petitioners by the de facto complainant. There is a further contention that the allegations do not at all constitute an offence punishable under Sec.326 of the IPC.

3. The learned Public Prosecutor opposes the application. At the moment and with the available inputs, there is absolutely no reason to assume that the allegations are raised vexatiously or with mala fide intent. There are telltale injuries suffered by the victim. Prompt complaint has been raised about the specific involvement of the petitioners. Final assessment regarding loss of vision has not been made; but the nature of the injury certainly indicates that the acid thrown had fallen on the eye resulting in serious injury to the eye. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I find no

reason to assume that the allegations are false or are raised with vexation. I do not find any reason, at this stage, to jump to a conclusion that the allegations do not constitute an offence under Sec.326 of the IPC. I do not find any reason to invoke the discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge